IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No.17591 of 1999

Between:

Joseph Chacko, S/o M.C. Chacko,
R/o Malaymundakkal, Uzhavoor East PO.,
Kottayam Dist., Kerala.

..... PETITIONER

AND

1 Under Secretary to Government, Government of India,
Ministry of Home Affairs, North Block, New Delhi.
2 Deputy Inspector General, Central Industrial Security Force,
(Southern Zone), Madras.
3 The Commandant, Central Industrial Security Force,
(Ministry of Home Affairs) Visakhapatnam Steel Project,
Visakhapatnam.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction especially one in the nature of writ of mandamus declaring that the order passed by the Respondents in No.V-15014/VSP/AD-II/Maj-15/89-91/471, dated 20.6.1991 as illegal, arbitrary and discriminatory and therefore violative of Art.311 of the Constitution of India and further declare that punishment imposed is shockingly disproportionate to the charge levelled against the petitioner and further declare that orders passed by the Appellate Authority in No.V-21114/24/98-L&R 838, dated 11.3.1999 and the Revisional orders also suffer from procedural infirmity; therefore violative of principles of natural justice and violative of Arts. 14 and 21 of the Constitution of India.

Counsel for the Petitioner: Mr.M.SURENDER RAO

Counsel for the Respondents: Mr.KANTHI NARAHARI,

Addl.S.C. for Central Government

The Court made the following :

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ORDER:

This writ petition is filed being aggrieved by the Orders passed by the disciplinary authority (3rd respondent) in its Proceedings dated 20-6-1991 dismissing the petitioner from service of the Central Industrial Security Force (CISF) as confirmed by the appellate and revisional authorities.

The petitioner joined the services of CISF as a Constable on 12-3-1982. Subsequently, he was promoted as Head Constable/Driver in the month of July,1987. He was posted at Bank Note Press, Devas. He rendered unblemished service and lastly was given posting at Visakhapatnam Steel Project. While working as such, he was detained in 'B' shift duty on 20-10-1989. He was asked to take a fire engine jeep bearing registration No.AHQ 6012 for trial run as well as to drop fire wing personnel from Fire Station to Unit lines. He obeyed the orders and took fire engine jeep for dropping the fire wing personnel as well as for a trial run. The vehicle gave trouble and stopped near Central Stores because of leakage of water due to breaking of hose-pipe. Immediately, he informed the same over telephone to the Fire Control Room and the telephone call was attended by one Pillai, ASI. However, no one attended the vehicle for more than one hour. Therefore, he contacted the fire control room over Telephone again at about 1030 hours. Then, ASI and Constable with another vehicle bearing No.MH 04 reached the spot and the vehicle was taken to fire control room by toeing the same to the vehicle bearing No.MH 04. This incident was taken as a lapse on his part and a charge memo dated 16-11-1989 was issued stating that he exhibited gross negligence in discharge of his duties and was directed to submit his explanation within ten days. He submitted a detailed explanation on 29-12-1989 denying the allegations. Having not satisfied with the explanation, a detailed enquiry was conducted and after complying with the

formalities, a show cause notice was issued and on receiving explanation from him, final proceedings were issued by the 3rd respondent on 20-6-1991 dismissing him from service. Aggrieved by the same, he preferred an appeal before the Deputy Inspector General, CISF on 7-7-1991. The said appeal was rejected on 2-4-1992. Challenging the same, he preferred O.P.No.3840 of 1993 before the High Court of Kerala at Ernakulam. The said O.P. was dismissed on 22-10-1998 on the ground that as the cause of action arose at Vizag, the High Court of Kerala does not have territorial jurisdiction. However, Kerala High Court directed him to file a revision as provided under Section 9(3) of the CISF Act. The revision filed by him was also dismissed on 11-3-1999. Aggrieved by the said orders, the present writ petition is filed. It is also stated that the entire allegation appears to be that the petitioner had not noticed the raise in the temperature by looking at the head metre while driving, which resulted in vehicle coming to a standstill because of raise of temperature of the engine. The driver is normally expected to concentrate on the road, but not on the different metres fixed to the vehicle. The respondents admitted that hose pipe was broken and that resulted in leakage of water, which was the root cause for radiator getting empty and the engine getting heated. There was no negligence on the part of the petitioner and nothing could be alleged against him. Further, imposition of punishment of dismissal from service, assuming the charges are proved, is shockingly disproportionate. Therefore, the order passed by the disciplinary authority as confirmed by the appellate and revisional authorities is liable to be set aside.

A detailed counter affidavit is filed on behalf of the respondents denying the allegations made by the petitioner. It is stated that on the charges levelled against the petitioner, a preliminary enquiry was conducted, in which it was found that the damage of the engine break down was caused due to the utter negligence of the petitioner. Basing on the said report, the petitioner was issued with a charge memo dated 16-11-1989 for his gross negligence, carelessness and dereliction of duty in driving the jeep. The petitioner was given full and fair opportunity to defend himself, but he did not avail the same. Enquiry was completed and report was submitted with a finding that the petitioner was guilty of the charges levelled against him. A copy of the enquiry report was served on the petitioner as per the rules. The disciplinary authority awarded the punishment of dismissal from service for good and sufficient reasons and it commensurates with the gravity of the offence. Petitioner filed an

appeal and further revision to the higher authorities, which were also dismissed being bereft of merit.

Heard both sides.

It is unfortunate that for a trivial misconduct of some negligence on the part of the petitioner, he was imposed with the ultimate punishment of dismissal from service. It may be apt to notice the charge, which reads as under:

> "An act of gross negligence, carelessness and dereliction of duty on the part of No.8226115, HC/Dvr. Joseph Chacko in that he failed to take care of the Jeep Fire Engine (AHQ-6012) kept in the Main Fire Station being used for trial run as well as to drop Fire Wing Personnel from Fire Station to Unit Lines on 20.10.1989 during "B" Shift duty, which resulted in malfunctioning of the engine due to over heating and he also failed to intimate the occurrence in time to the duty officer."

It is not the case of the respondent-authorities that the hose-pipe of the engine was not broken. It is the common knowledge that once the hose pipe is burst, the radiator will not work and temperature of the engine is bound to rise and in the process, the engine was bound to come to a standstill. In the charge, nowhere it is stated that due to this trivial negligence on the part of the petitioner, there was any damage caused to the engine and that resulted in heavy expenditure in repairing the vehicle etc. The only charge is some negligence on the part of the petitioner, which is very trivial. We need not go into other details as to the conduct of enquiry by the authorities etc. Even assuming that the charge is proved in full, the punishment imposed by the 3rd respondent is shockingly disproportionate to that of the misconduct alleged. Further, the petitioner asserted that he had rendered 9 years of unblemished service, which is not denied in the counter affidavit filed by the 3rd respondent on behalf of all the respondents. In the absence of any adverse remarks in the service record of the petitioner and in view of the triviality of the charge, the punishment of dismissal from service is unconscionable and unfair on the part of respondents. Petitioner was dismissed from service on 20-6-1991 and by now, for more than 13 years he is out of service. In view of the above, instead of remitting the matter back to the disciplinary authority for taking appropriate decision as to the proportionality of the punishment, since it is shockingly disproportionate, I feel it is better to give a quietus here in this proceeding. Therefore, the impugned Proceedings No.V-15014/VSP/Ad-II/Maj-15/89-91/471, dated 20-6-1991 as confirmed by the appellate and revisional

authorities are declared as arbitrary and illegal and set aside the same. Consequently, the respondents are directed to impose a punishment of stoppage of two annual increments without cumulative effect in place of the punishment of dismissal from service against the petitioner. Thus, the petitioner is entitled for reinstatement into service with continuity of service and all attendant benefits including full back wages and promotional benefit, if any.

The Writ Petition is allowed to the extent indicated above. There shall be no order as to costs.

9th September,2004

prk

The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday, the ninth day of September Two thousand and Four.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 Under Secretary to Government, Government of India,
Ministry of Home Affairs, North Block, New Delhi.
2 Deputy Inspector General, Central Industrial Security Force,
(Southern Zone), Chennai.
3 The Commandant, Central Industrial Security Force,
(Ministry of Home Affairs) Visakhapatnam Steel Project,
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